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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

FERNADO OSPINA and
TRACI REEDY,

Plaintiffs,

v.

MATTHEW J. WERTANEN, STATE OF
ALASKA DEPARTMENT OF PUBLIC
SAFETY,

Defendants.

Case No. 3:19-cv-00224-JWS

**STIPULATION AND ORDER GOVERNING THE PRODUCTION
AND USE OF ALASKA STATE TROOPER OPERATING PROCEDURES
MANUAL; TROOPER DETACHMENT E STANDARD OPERATING
PROCEDURE MATERIALS; and TRAINING MATERIALS**

Certain documents relating to the State of Alaska, Department of Public
Safety (DPS) Operating Procedures Manual (OPM), Standard Operating Manual
(SOP) for Alaska State Trooper Post/Detachment E, and DPS training materials
may be reasonably calculated to lead to the discovery of admissible evidence.
Such records are subject to various confidentiality protections. To preserve and

1 maintain confidentiality of the documents and to facilitate discovery of that
2 information, Counsel for Fernando Ospina and Traci Reedy, Trooper Matthew
3 Wertanen and DPS stipulate to the production, use, and dissemination of portions
4 of the OPM for DPS, SOP for Alaska State Trooper Post/Detachment E, and
5 DPS training materials subject to the following provisions:
6

7 1. The documents, materials and information to which this stipulation
8 and order apply include chapters of the DPS OPM (101 Standards of Conduct;
9 107 Use of Force; 118 Use of Deadly Force; 222 Interviews; and 223 Arrest);
10 SOP chapters for Alaska State Trooper Post/Detachment E which correlate to the
11 OPM chapters listed; and training materials related to use of force, arrest and
12 detainment, interviewing, rendering aid, and investigation that were used to train
13 troopers at its Academy during the time period that Trooper Matthew Wertanen
14 attended the Academy in 2005. These records are considered confidential and
15 protected under AS 40.25.120(6)(F) & (G).
16

17 2. DPS will make the DPS records identified in paragraph one
18 available to the other parties in this case through counsel.
19

20 3. DPS may redact the records identified in paragraph one if it
21 believes failing to redact information would: disclose confidential techniques and
22 procedures for law enforcement investigations or prosecutions, or disclose
23 guidelines for law enforcement investigations or prosecutions if the disclosures
24 could reasonably be expected to risk circumvention of law. DPS shall serve a
25 privilege log describing any redacted information with enough detail to enable
26

1 review of the privilege asserted. Any disputes as to the discoverability of
2 documents and materials shall be resolved by the court prior to disclosure and/or
3 production. This provision does not waive any party's ability to move for court-
4 ordered production of redacted information.

5
6 4. These materials shall be marked with a stamp identifying them as
7 confidential and this stamp shall be included on all future copies of these
8 materials.

9 5. The materials identified in paragraph one may be made available
10 by parties' counsel only to their staff, expert witnesses, consultants, and parties
11 to this action who are actively engaged in the conduct of this action solely for the
12 purpose of preparing for trial in this matter, provided all such persons are
13 instructed that the materials and information contained in them shall remain
14 confidential and shall not be disclosed to third parties.

15
16 6. Documents produced under this agreement shall only be used in
17 this case and shall not be disclosed or produced outside of this litigation.

18
19 7. All discovery materials obtained as part of this action, including
20 deposition testimony, shall not be disclosed outside this litigation nor posted or
21 published on the Internet, You Tube, or any form of social media without court
22 order.

23
24 8. Before any person is allowed to view any portion of the documents
25 identified in paragraph one, he or she shall be informed of the terms of this
26 stipulation and order and agree to be bound by it. In the event any copy service is

1 engaged to copy or otherwise handle any portion of the OPM, SOP, or training
2 materials, its representatives shall be informed of the terms of this stipulation and
3 agree to be bound by it.

4
5 9. This agreement and order shall not preclude the disclosure of the
6 materials identified in paragraph one or the information contained in those
7 materials to a witness during a deposition in this case or preclude the inclusion of
8 any portion of the materials as an exhibit to a deposition if: (a) the disclosure is
9 pursuant to the terms of this agreement; and (b) deponents and court reporters are
10 instructed that the material and information is confidential and shall not be
11 disclosed to third parties.

12
13 10. If a party files materials produced pursuant to this stipulation, the
14 party will mark and identify the materials as confidential. Pursuant to Federal
15 Rule of Civil Procedure 5.2(e)(2), nonparties' remote electronic access to the
16 material filed with the court will be prohibited. The parties agree to attempt to
17 resolve amongst themselves any questions or disputes regarding the filing of
18 protected evidence prior to seeking court intervention.

19
20 11. Control and distribution of all copies of documents and materials,
21 and information contained in them, shall be in accordance with this stipulation
22 and order and shall be the responsibility of counsel for the parties. Protected
23 evidence shall be copied only as necessary to the prosecution or defense of this
24 lawsuit.
25
26

1 12. This stipulation and order do not broaden, restrict, or otherwise
2 change the scope of discovery and disclosures required by the Civil Rules, nor
3 does it restrict a party's right, if any, to propound additional discovery.

4 13. This stipulation and order do not alter the rules pertaining to
5 disclosure and discovery, and the parties do not waive any objections to
6 disclosure or discovery. The parties are not required to provide discovery beyond
7 that permitted by the Federal Rules of Civil Procedure, nor are they required to
8 provide discovery other than through interrogatories, requests for production,
9 requests for admission, or depositions.
10

11 14. This stipulation and order do not affect the applicability of any
12 rules pertaining to confidentiality or privacy with respect to the use of the
13 protected evidence at trial or any other public proceedings. All objections to
14 disclosure in public proceedings are preserved.
15

16 15. This stipulation and order do not alter the rules relating to
17 admissibility of evidence at trial. All objections to admissibility are preserved.
18

19 16. At the end of litigation, whether by settlement, trial, or dismissal,
20 upon request of DPS, all protected documents produced under this stipulation
21 and order and all copies of those documents shall be accounted for and returned
22 to the party which produced them.

23 17. The provision of this stipulation and order shall continue to be
24 binding after the termination of this litigation.
25
26

1 18. The parties ask the court to sign the attached order, allowing the
2 use, production, and dissemination of restricted, confidential materials as
3 stipulated to in this agreement.
4

5 DATED: December 11, 2019.

6 BARBER & ASSOCIATES, LLC

7 By: /s/Jeffrey J. Barber
8 Jeffrey J. Barber
9 Attorney for Plaintiff
 Alaska Bar No. 0111058

10 LAW OFFICE OF CHADWICK McGRADY

11 By: /s/Chadwick McGrady
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20 KEVIN G. CLARKSON
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22 By: /s/Jessica Leeah
23 Jessica Leeah
24 Assistant Attorney General
25 Alaska Bar No. 0412105
26

ORDER

This matter having come before the court on stipulated agreement and the court being duly advised,

IT IS HEREBY ORDERED that the Stipulation Governing the Production, Use and dissemination of the Operating Procedures Manual (OPM) for the Department of Public Safety (DPS), Standard Operating Manual (SOP) for Alaska State Trooper Post/Detachment E, and DPS training materials is GRANTED. The materials may be produced and used subject to the limitations outlined in the parties' stipulation.

DATED this _____ day of _____, 2019.

Honorable John W. Sedwick
United States District Court Judge